



Expires – Upon issuance of LPP

Interim Guidance on the Use of Project Labor Agreements

I. BACKGROUND

On February 6, 2009, President Obama issued Executive Order 13502 (the Order) on the use of a Project Labor Agreement (PLA) for Federal-aid construction contracts. A copy of the Order is attached. The Order revoked two Executive Orders issued under President Bush, which required any executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects to ensure that no project specifications were used that either required or prohibited bidders from utilizing PLAs. The Federal government now believes that PLAs could be beneficial for large-scale construction projects, generally those with a total cost of \$25 million or more, due to the benefits that PLAs can offer by promoting the efficient and expeditious completion of such projects. Local agencies may request the use of PLAs on projects totaling less than \$25 million if the project would otherwise comply with this guidance. The Federal Highway Administration (FHWA) has issued this interim guidance for use until final implementing guidance is released by the Office of Management and Budget.

II. POLICY

Pursuant to the Executive Order, PLAs may be used on federal-aid construction project contracts by local public agencies provided that the agency presents evidence that the use of such an agreement on the relevant project will:

- (i) advance the government's interest in reducing construction costs and achieving economy and efficiency, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters as appropriate; and
- (ii) be consistent with law.

III. PROCEDURE

If an agency would like to use a PLA on a federal-aid construction contract, the agency should submit a request for approval to their District Local Assistance Engineer (DLAE) including the draft PLA and written justification describing why the project advances the interest of the government. The draft PLA must be submitted and approval received prior to construction authorization. The use of a PLA may be approved if the local agency has made a reasonable showing that the use of a PLA on the project will advance the interests of the government. In determining whether the use of a PLA is in the interest of the government, a local agency may consider many factors. Those factors include, but are not limited to:

- the size and complexity of the project;



- the importance of the project and need to adhere to a certain timeline;
- the risk of labor unrest on the project and the circumstances that are present that may lead to a heightened risk of labor disruption, such as the history of labor unrest in the area, the anticipated working conditions of the project relating to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;
- the impacts of a labor disruption to the users, the operation of the facility, and the region;
- the costs of a delay should a labor disruption occur; and
- the available labor pool relative to the particular skills required to complete the project.

A showing of any one or more of these factors may be adequate to justify the use of a PLA in a particular project. This list is not exclusive—other factors may reasonably permit a local agency to conclude that the use of PLA is appropriate for a given project.

In order to be valid, the draft PLA must:

- bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- contain guarantees against strikes, lockouts, and similar job disruptions;
- set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the PLA;
- provide other mechanisms for labor-management cooperation on matters of mutual and concern, including productivity, quality of work, safety, and health; and
- fully conform to all statutes, regulations, and executive orders.

Upon receipt of the request for approval, the draft PLA and the written justification; the request will be reviewed, using the established criteria, by Caltrans and then forwarded to FHWA for their review and approval.

IV. APPLICABILITY/IMPACTS

This office bulletin is applicable to “large scale construction projects” with a total cost of \$25 million or more, though PLAs on projects totaling less than \$25 million will be considered if the project would otherwise comply with this guidance. All requests from local agencies for a PLA



should be submitted to the District Local Assistance Engineer (DLAE). Upon receipt by the DLAE, Caltrans will thereafter be responsible for managing the local agency's PLA request including FHWA's review and approval/disapproval, and the response back to the requesting local agency.

Recommended:	<u>Original Signed By</u> Eugene Shy, Committee Chair	<u>10/25/10</u> Date
Approved:	<u>Original Signed By</u> Mohsen Sultan, Chief Office of Policy Development & Quality Assurance	<u>10/25/10</u> Date

ATTACHMENT: Executive Order 13502 of February 6, 2009